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Lawmakers in Assembly, Senate Say Workers Comp Fee Schedule Unlikely to Pass

In back-to-back news reports this week, a spokesperson for Senate Labor Chairman Steve Nass (R-Whitewater) and Speaker Robin Vos (R-Rochester) both indicated that passage of a bill enacting a workers compensation fee schedule in Wisconsin is unlikely this session.

Nass, as chairman of the Senate Labor and Regulatory Reform Committee, called for a rare procedural move known as Committee introduction of the bill, requiring a vote of the Committee to introduce the legislation on behalf of that Committee rather than by one single lawmaker. The move was seen by many as a way to allow the bill to be heard in the Senate Labor Committee even though the legislation, which was developed by the Workers Compensation Advisory Council, has received little to no support in the state capitol.

A spokesperson for Nass told WisPolitics.com the procedural move “by no means” indicates the bill would be moving out of the Committee. Nass’ spokesperson said that “[Senator Nass] will not be scheduling the bill for a vote as long as the fee schedule is in it.”

WHA President/CEO Eric Borgerding applauded Nass’ firm opposition to government rate setting for medical care provided to those injured at Wisconsin businesses. “We thank Chairman Nass, who has heard from constituents that a government fee schedule is the wrong approach to lowering workplace injuries and reducing overall costs in our state’s workers compensation program,” said Borgerding.

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Congress Passes Tax Reform Package, Sends to President *PABs protected, individual mandate penalty repealed*

This week the U.S. Senate and U.S. House of Representatives approved sweeping tax legislation, sending it to the President for his signature. The President is not expected to sign the legislation into law until early 2018, negating the imminent threat of sequester cuts due to PAYGO rules until 2019.

The good news is that the final legislation does not include a provision removing the current tax exemption afforded to private activity bonds (PABs), as the Wisconsin Hospital Association had advocated (see article at www.wha.org/wha-newsletter-12-15-2017.aspx#s1). However, the bad news is the legislation does repeal the tax exemption on advance refunding bonds, and, more importantly, repeals the individual mandate penalty.

“WHA is pleased Congress preserved tax-exempt financing tools for non-profit hospitals, a position advocated by WHA, our members, Governor Walker, Congressman Gallagher and many others from both sides of the aisle,” said WHA President/CEO Eric Borgerding. “However, we are concerned several provisions in the package will negatively impact Wisconsin health care, including the repeal of the individual insurance mandate. With this provision, we see the latest step in the piecemeal deconstruction of Obamacare, but with nothing to replace it, nothing to bridge or transition. This will result in fewer people insured, starting next month, and will most certainly result in higher uncompensated care costs for hospitals and health systems.”

DHS Publishes New Increased Outpatient Behavioral Health Rates

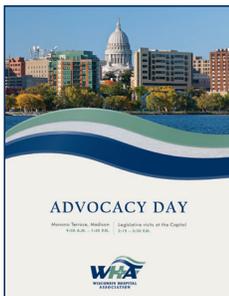
The Department of Health Services (DHS) formally published new Medicaid reimbursement changes for outpatient behavioral health services in the December 2017 *ForwardHealth* Update No. 2017-41 (www.forwardhealth.wi.gov/kw/pdf/2017-41.pdf). Gov. Scott Walker and DHS Secretary Linda Seemeyer announced in October an approximately \$17 million investment, including \$7 million in state funding, to raise Medicaid reimbursement rates for professionals providing outpatient mental health and substance use disorder services.

Effective for dates of services on and after January 1, 2018, the December *ForwardHealth* Update makes three changes to current Medicaid reimbursement for outpatient mental health and substance abuse services:

- **Reimbursement Rates** - New higher Medicaid reimbursement rates are listed for those services outlined in the Outpatient Mental Health and Outpatient Substance Abuse service areas of the Forward Health Online Handbook.
- **Rate Structure** – There will be two sets of fees per procedure depending upon the provider’s professional licensure rather than four sets of fees per procedure. For example, previously, psychotherapy services provided by a physician psychiatrist were paid at a higher rate than a Ph.D. psychologist; under the new rate structure, services provided by a physician psychiatrist and a Ph.D. psychologist are paid the same rate.
- **New Substance Abuse Claims Submission Requirements** – Under the Update, certain substance abuse codes will now represent 15 minutes of service per one unit rather than 60 minutes of service per one unit.

The *ForwardHealth* Update did not include any reimbursement changes for evaluation and management (E/M) codes now commonly used by psychiatrists and APNP-psych providers following national coding standard changes in 2013 that deleted dedicated psychiatric evaluation codes. In comments submitted by WHA to DHS in November, WHA noted member feedback that E/M codes now make up at least 80 percent of psychiatrists’ outpatient visits for Medicaid visits and recommended that DHS include E/M codes used by psychiatrists and APNP-psych providers in its outpatient behavioral health reimbursement increase.

“WHA applauds Governor Walker’s leadership in making investments in Medicaid reimbursement rates to make outpatient behavioral health services more financially sustainable and accessible,” said Eric Borgerding, WHA president/CEO. “Increasing the Medicaid reimbursement rate for outpatient behavioral health services billed as E/M codes by psychiatrists will be a priority for WHA, and we look forward forward to working with DHS, the administration, and legislators in that effort.”



2018 Advocacy Day: Register Today! **March 21, 2018 *** Monona Terrace, Madison**

Make an impact in Madison for your hospital by attending Advocacy Day on March 21, 2018.

Register Today at: www.whareg4.org/2018AdvocacyDay.

WHA Attends CMS Stakeholder Meeting in Chicago

Reducing regulatory and measurement burden a key focus of discussions

Earlier this month, WHA and other state hospital associations and medical societies were invited to participate in a Centers for Medicare and Medicaid Services' (CMS) stakeholder meeting in Chicago. The meeting was an opportunity for WHA and others within CMS Region V to hear from CMS and CMS's Medicare administrative contractors (MACs) about CMS programs and initiatives.

Among the topics discussed by CMS during the meeting were two recently launched CMS initiatives to reduce regulatory burden on health care providers.

First, the "Patients Over Paperwork" initiative is an effort by CMS to allow providers to spend more time on clinical tasks. According to CMS, the areas that create the most paperwork for providers are payment policy, quality measures, documentation, Conditions of Participation compliance and health information technology. Additional information can be found here: www.cms.gov/Outreach-and-Education/Outreach/Partnerships/PatientsOverPaperwork.html.

Second, the "Meaningful Measures" initiative will examine how to assess health care providers only on those core issues that are most vital to providing high-quality care and improving patient outcomes. According to CMS, the initiative will empower patients and physicians to make decisions about health care, usher in a new era of state flexibility and local leadership, support innovative approaches to improve quality, accessibility and affordability, and improve the CMS customer experience.

"WHA is pleased that CMS is recognizing the need to reduce regulatory and measurement burden on hospitals, physicians and other clinicians who continue to be asked to do more at a lower cost," said Eric Borgerding, WHA president/CEO. "Unnecessary reporting requirements impact the efficiency of health care delivery overall, and in particular negatively impacts the physician workforce. Addressing that burden on physicians has been and will continue to be a key focus for WHA."

WHA submitted several recommendations on ways to reduce Medicare's regulatory and statutory burden to the U.S. House of Representatives' Ways & Means Committee in August. Those recommendations and comments can be found in WHA's August 25, 2017, *Valued Voice* newsletter (www.wha.org/wha-newsletter-8-25-2017.aspx#s7).

Other topics discussed at the CMS meeting include:

- *Laboratory Documentation Errors*. During a presentation by a CMS MAC, it was stated that the highest rate of documentation error for health care providers submitting claims is found in laboratory orders. Specifically, the MAC indicated a common documentation error was failure to document evidence of a physician's intent to order the lab work. The presenting MAC encouraged providers to clearly articulate what they are ordering and why they are ordering the lab work.
- *Medicare Advantage*. CMS said participation in Medicare Advantage plans has been growing tremendously, with one in three Medicare beneficiaries now belonging to such a plan. In Wisconsin, 39 percent of beneficiaries are enrolled in a Medicare Advantage plan.
- *"Targeted Probe and Educate" Initiative*. CMS is starting a program called "Targeted Probe and Educate" (TPE), wherein CMS MACs will review the submitted clinical documentation of health care providers with the highest claim error rates or with billing practices that vary significantly from their peers. TPE will involve up to three rounds of review and individualized education. Providers who continue to have high error rates after the three rounds may be referred by the MAC to CMS for additional action. A CMS Fact Sheet on TPE may be accessed at www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Medical-Review/Targeted-Probe-and-EducateTPE.html.

For more information about the CMS meeting or any of the topics referenced in this article, contact Andrew Brenton, WHA assistant general counsel, at abrenton@wha.org or 608-274-1820.

NLRB Decision Restores Prior Joint Employer Standard

Decision could positively impact hospitals

Last week, the National Labor Relations Board (NLRB) released a decision that changes the standard for determining when two separate companies qualify as “joint employers” and thereby become subject to the duties of direct employers under the National Labor Relations Act (NLRA), including the duty to bargain collectively with unions over essential terms and conditions of employment. The 3-2 decision reverses the NLRB’s controversial *Browning-Ferris* decision from 2015 and restores the joint employer standard that had been well established for several decades prior to *Browning-Ferris*. (The 2015 *Browning-Ferris* decision was reported previously in *The Valued Voice* at www.wha.org/Data/Sites/1/pubarchive/valued_voice/WHA-Newsletter-9-4-2015.htm#8.)

As a result of last week’s decision, a company that uses another company’s employees will be deemed a “joint employer” of such employees under the NLRA only if the company has exercised direct and immediate control over essential employment terms of the borrowed employees and has done so in a manner that is not limited and routine. The decision reverses the principle from *Browning-Ferris* that a company can qualify as a joint employer if it merely has reserved authority to control borrowed employees but has not directly exercised such control.

Because many staffing services agreements reserve to the company obtaining the staffing services rights over the borrowed employees, the NLRB’s 2015 decision had created uncertainty for companies, including hospitals and health systems, that contract with staffing agencies where the borrowed employees are unionized.

The NLRB’s decision can be found here: www.wha.org/pdf/BoardDecision.pdf.

If you have questions or comments on the decision, contact Andrew Brenton WHA, assistant general counsel, at abrenton@wha.org or 608-274-1820.

New Enhanced Nurse Licensure Compact Focus of January 16 WHA Webinar

On January 16, 2018, WHA will offer a WHA member forum webinar entitled “Enhanced Nurse Licensure Compact (eNLC): A Voluntary, Alternative & Expedited Process for Nurse Licensure.” This complimentary webinar will provide information on eligibility criteria for eNLC multistate licenses, which nurses who currently hold a multistate license will be grandfathered into the eNLC, and which states are members of the eNLC.

WHA presenters are Ann Zenk, vice president of workforce and clinical practice, and Andrew Brenton, assistant general counsel. They will also provide details about how and when the eNLC will be implemented in Wisconsin.

For more information and to register, visit: www.whareg4.org/eNLCWebinar. For content questions, contact Ann Zenk at 608-274-1820 or azenk@wha.org. For registration questions, contact Kayla Chatterton at kchatterton@wha.org or 608-274-1820.

Member News: Wheaton Franciscan's All Saints Hospital Names McManmon President



Kristin McManmon

Kristin McManmon, BS, MHA, FACHE, has accepted the role of president of Wheaton Franciscan Healthcare-All Saints, part of Ascension, in Racine, effective December 11, 2017. Kristin was most recently president, ambulatory care, for OhioHealth, a not-for-profit, faith-based health system serving central Ohio.

"Kristin is a dynamic leader with extensive operations and service line and administrative experience, all of which will serve our patients and associates well as she assumes this role for Ascension Wisconsin," stated Travis Andersen, South Region president, Ascension Wisconsin. "Even more important than her demonstrated leadership experience, Kristin is committed to our promise to deliver personalized, compassionate care to all, with special attention to those who are most vulnerable."

Prior to joining OhioHealth, McManmon served as executive vice president/chief operating officer for St. Mary's Hospital in Madison, Wisconsin. McManmon held leadership positions for over 20 years throughout SSM Health including corporate office, SSM Health's St. Louis' regional office, several St. Louis area hospitals, as well as St. Clare Hospital in Baraboo, Wisconsin.

McManmon earned her Bachelor of Science degree from the University of Dayton and a master's degree in health care administration from St. Louis University.

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After Nass' announcement, Speaker Robin Vos subsequently told several media outlets that a workers compensation fee schedule is one of a handful of proposed policies he does not see passing the Assembly this session. In an interview with WisPolitics.com, Vos stated that workers compensation premiums have dropped for the second year in a row, saving businesses in Wisconsin \$170 million in 2017 alone according to the Department of Workforce Development, which has "raised questions for him" on whether a fee schedule is needed.

"If there's not a crisis, the groups should find a consensus and come to us with a solution, not expect that we're going to try to do one through the process we utilize," Vos told WisPolitics.com in the interview.

WHA President/CEO Eric Borgerding said, "Speaker Vos understands the position of his caucus, which is overwhelmingly opposed to implementing a government-imposed medical fee schedule in our state's workers compensation program. As other states look to Wisconsin's workers comp system with envy, point to it as a model, some here would have policymakers believe we are in some sort of crisis. The broader facts tell a much different story, and WHA applauds the Republicans and Democrats in both houses who understand this, and are increasingly unwilling to rubber stamp all-or-nothing proposals coming out of the Workers Compensation Advisory Council."

WHA has joined several other groups to oppose price setting for health care delivered to those injured at Wisconsin businesses. Many of those same groups are optimistic that alternative bills will emerge from within the Legislature, proposals that will further improve care for those injured in the workplace while streamlining the multi-layered bureaucracy that has evolved around the workers compensation industry.

"The job of developing workers compensation legislation should not be solely within the purview of an advisory council, nor should making progress on improving workers compensation be held up by controversial fee schedules," Borgerding said. "We are anxious and looking forward to working with legislators and a broad coalition of groups to support an actual agreed to bill that will advance sound reforms."